



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *BK v Canada Employment Insurance Commission*, 2020 SST 1225

Tribunal File Number: GE-20-767

BETWEEN:

B. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: September 3, 2020

DATE OF DECISION: October 9, 2020

Decision

[1] The appeal is allowed in part. I find that the Appellant has shown his availability for work for the period from December 20, 2018, to May 7, 2019, inclusive, but not from May 8, 2019, to August 3, 2019, when his benefit period ended.¹ His entitlement to Employment Insurance benefits should therefore be established from December 20, 2018, to May 7, 2019, inclusive, but it cannot be established for the period from May 8, 2019, to August 3, 2019.

Overview

[2] Since 2010, the Appellant has worked as a French as a second language instructor for X (X or employer), a language school.

[3] The Appellant made a renewal claim for benefits on June 6, 2019, and it was made effective on May 12, 2019.²

[4] On July 18, 2019, the Canada Employment Insurance Commission (Commission) informed him that it was unable to pay him Employment Insurance benefits from December 20, 2018. It explained to him that the permit authorizing him to work in Canada was expired after December 20, 2018, that his Social Insurance Number was no longer valid as of that date, and that he had not provided the required documents.³

[5] On November 25, 2019, after reconsidering his claim for benefits, the Commission informed him that it was unable to pay him Employment Insurance benefits, since his new work permit was valid only from September 17, 2019, to September 17, 2020, when his claim for benefits ended on August 3, 2019. It explained that, as a result, it was unable to pay him benefits after December 20, 2018.⁴

¹ See section 18(1)(a) of the *Employment Insurance Act* (Act).

² See GD3-3 to GD3-16.

³ See GD3-28 and GD3-29.

⁴ See GD3-34 and GD3-35.

[6] On February 4, 2020, the Commission informed him that it had upheld the decision of November 25, 2019, about his availability for work.⁵

[7] The Appellant explains that he disagrees with the Commission's decision that he was not available for work during the period from December 20, 2018, to August 3, 2019. He argues that he was available for work during that period. The Appellant indicates that he took steps to renew his work permit before it expired. He says that, even though his work permit was expired on December 20, 2018, and was renewed on September 17, 2019, he still had "implied status" to work. The Appellant explains that he worked at various points during that period and that he also took steps to find a job when he was out of work. He indicates that he took time off from May 8 to 31, 2019, inclusive. The Appellant argues that the Commission did not properly assess his availability for work. On March 3, 2020, the Appellant challenged the Commission's reconsideration decision. That decision is now being appealed to the Tribunal.

[8] I must decide whether the Appellant has proven that he was available for work. The Appellant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he was available for work.

Issue

[9] I must decide whether the Appellant was available for work during the period from December 20, 2018, to August 3, 2019.⁶

Analysis

[10] Two sections of the *Employment Insurance Act* (Act) indicate that claimants have to show that they are available for work.⁷ Both sections deal with availability, but they involve two separate disentitlements.

⁵ See GD2-5, GD2-6, GD3-53, and GD3-54.

⁶ See section 18(1)(a) of the Act.

⁷ See sections 18(1)(a) and 50(8) of the Act.

[11] First, a claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that, on that day, the claimant was capable of and available for work and unable to obtain suitable employment.⁸

[12] Second, to prove availability for work, the Commission may require the claimant to prove that they are making reasonable and customary efforts to obtain suitable employment.⁹

[13] I point out that, in this case, I will not be looking at whether the Commission required the Claimant to prove reasonable and customary efforts to obtain suitable employment.¹⁰

[14] In its representations, the Commission simply argued that the Appellant was unable to show that he was looking for work, given his failure to show that he was capable of work or that he had the right to work.¹¹

[15] I note that the Tribunal's Appeal Division has found that, before disentitling a claimant from receiving benefits for not providing the proof of reasonable and customary efforts to find suitable employment that it requires, the Commission must first ask the claimant for the proof, and it must specify what kind of proof will satisfy its requirements.¹²

[16] The notion of "availability" is not defined in the Act. Federal Court of Appeal (Court) decisions have set out factors for determining a person's availability for work and whether they are entitled to Employment Insurance benefits.¹³

[17] Availability is a question of fact that calls for the consideration of three general factors. These three factors are:

- 1) the desire to return to the labour market as soon as a suitable job is offered

⁸ See section 18(1)(a) of the Act.

⁹ See section 50(8) of the Act.

¹⁰ See section 50(8) of the Act.

¹¹ See GD4-8.

¹² See the decision of the Social Security Tribunal's Appeal Division in *LD v Canada Employment Insurance Commission*, August 10, 2020, AD-20-575 (paragraph 16).

¹³ The Court established or reiterated this principle in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

- 2) the expression of that desire through efforts to find a suitable job
- 3) not setting personal conditions that might unduly limit the chances of returning to the labour market¹⁴

[18] When considering each of these factors, it is necessary to look at a claimant's attitude and conduct.¹⁵

[19] In this case, I point out that my analysis deals specifically with the period from December 20, 2018, to August 3, 2019. First, the Commission told the Appellant that it was unable to pay him Employment Insurance benefits from December 20, 2018, because the permit authorizing him to work in Canada was expired on that date, adding that his claim for benefits had ended on August 3, 2019.¹⁶ Second, the Appellant indicated that he was challenging the Commission's decision that he was not available for work.¹⁷ He did not say whether there were periods for which he was not challenging the decision, whether periods he worked for the employer or the period he was off work.

[20] Under the circumstances, I find that the Appellant is challenging the Commission's decision that he was not available for work from December 20, 2018, until the end of his benefit period on August 3, 2019.

[21] In this case, I find that the Appellant met the factors set out above during the period from December 20, 2018, to May 7, 2019, inclusive. He has shown that his efforts to find a job during the period in question were reasonable and customary.

[22] However, I find that this was no longer the case from May 8, 2019, to August 3, 2019, when his benefit period ended.

¹⁴ The Court established or reiterated this principle in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

¹⁵ The Court established this principle in the following decisions: *Whiffen*, A-1472-92; and *Carpentier*, A-474-97.

¹⁶ See GD2-5, GD2-6, GD3-28, GD3-29, GD3-34, GD3-35, GD3-53, and GD3-54.

¹⁷ See GD2-1 to GD2-6.

Issue 1: Did the Appellant show a desire to return to the labour market as soon as a suitable job was offered?

[23] The Appellant showed his “desire to return to the labour market” as soon as a suitable job was offered during the period from December 20, 2018, to May 7, 2019. However, he did not show it for the period from May 8, 2019, to August 3, 2019.

[24] The Appellant argues that he has a desire to work. He says that he was available for work and that he showed it.

[25] The Appellant has worked for the employer since 2010. He says that it is a full-time job. Every year, he renews his work permit to be able to work in Canada.¹⁸

[26] The Appellant indicates that he applied to renew his work permit on November 1, 2018, before it expired.¹⁹ On November 1, 2018, he paid Citizenship and Immigration Canada \$100 to renew his permit.²⁰

[27] The Appellant argues that, despite the expiry of his work permit on November 2, 2018,²¹ and its renewal on September 17, 2019,²² he retained an “implied status” indicating that he implicitly still had a work permit.

[28] He explains that, even though his work permit situation was not resolved, he was able to work at various points during the period from December 20, 2018, to August 3, 2019.

¹⁸ Work permit issued by Immigration, Refugees and Citizenship Canada (IRCC).

¹⁹ See GD3-19, GD3-20, and GD3-22.

²⁰ Official receipt from Citizenship and Immigration Canada dated November 1, 2018, showing that the Appellant paid it \$100—see GD3-33.

²¹ Work permit IRCC issued to the Appellant on November 2, 2017, with an expiry date of November 2, 2018—see GD3-17.

²² Work permit IRCC issued to the Appellant on September 17, 2019, with an expiry date of September 17, 2020—see GD3-31 and GD3-32.

[29] The Appellant argues that the following evidence shows that he still had implied status:

- letter from Immigration, Refugees and Citizenship Canada (IRCC) to the Appellant dated December 20, 2018, asking him to pay the exact amount requested concerning his work permit application, received on November 13, 2018²³
- handwritten note from an IRCC officer containing an excerpt from the *Immigration and Refugee Protection Regulations* and given to the Appellant so that he could show it to a potential employer if necessary²⁴
- the Appellant's return to work with the employer on September 10, 2019, before the renewal of his work permit on September 17, 2019
- the lack of any summons or charges that he could have faced from an IRCC officer if he had lost his implied status²⁵

[30] Concerning IRCC's letter to him dated December 20, 2018,²⁶ the Appellant argues that it was a follow-up to the renewal application he had initially made on November 1, 2018,²⁷ before his permit expired. He explains that the letter was sent to him so that he would pay the total amount of \$155 to complete his application, and so that a new work permit could be issued to him.²⁸ He says that he did as asked. On May 21, 2019, he made a new application.²⁹ The Appellant points out that, when he applied to renew his permit on November 1, 2018, IRCC kept the \$100 he had initially paid for this purpose,³⁰ until he could pay an additional \$55 to complete his application.³¹

²³ See GD3-23 and GD3-24.

²⁴ Handwritten note indicating that, if you apply for an extension of the work [permit] before the permit expires, you retain your status until the day the officer makes a decision. The note refers to sections 183(5) and 183(6) of the *Immigration and Refugee Protection Regulations*—see GD3-25.

²⁵ See GD3-38.

²⁶ See GD3-23 and GD3-24.

²⁷ See GD3-19 and GD3-20.

²⁸ See GD3-23 and GD3-24.

²⁹ See GD3-20 to GD3-22 and GD3-27.

³⁰ See GD3-33.

³¹ See GD8-1.

[31] According to the Appellant, the Commission is wrong in finding that he applied for his permit when he paid the remaining \$55 rather than when he initially applied to renew it. He stresses that this is where the misunderstanding between him and the Commission lies.

[32] Regarding the handwritten note from an IRCC officer containing an excerpt from the *Immigration and Refugee Protection Regulations*,³² the Appellant explains that it was given to him so that he could show it to a potential employer or anyone else as proof that he still had implied status to work. He points out that he was given the note in case his work permit was expired.

[33] Concerning his return to work with the employer, the Appellant specifies that he returned to work on September 10, 2019, even though his work permit had not been renewed by then. His work permit was renewed several days later, on September 17, 2019.³³ According to the Appellant, if he had lost his implied status, he would not have been able to work, and IRCC officers would have informed him of this situation.³⁴

[34] As for the lack of any summons or charges from an IRCC officer, the Appellant argues that an IRCC officer would have summoned him if he did not have implied status. He indicates that he could also have been charged for violating the *Immigration Act (Immigration and Refugee Protection Act)*. According to the Appellant, his implied status was not revoked, since he did not get a notice to that effect.³⁵

[35] The Appellant argues that the Commission initially recognized that he had “implied status,” but it later backtracked.³⁶ He points out that the Commission indicates the following in the file: [translation] “[C]onsidering that it is not clear whether [the Appellant] still has implied status, [the Commission] decided to contact the IRCC Call Centre.”³⁷

³² See GD3-25.

³³ See GD3-31 and GD3-32.

³⁴ See GD3-42.

³⁵ See GD3-38.

³⁶ See GD3-38, GD3-43, and GD3-44.

³⁷ See GD3-37.

[36] The Appellant explains that the Commission asked him for written confirmation from IRCC showing that he still had implied status even though his work permit had not been renewed.³⁸ He says that, contrary to what the Commission indicated,³⁹ he did not promise to provide it with a written document (ex., letter) to that effect.

[37] The Appellant says that the Commission suggested that he take steps under the *Access to Information Act* to get an official document showing that he had implied status even though his work permit was expired.⁴⁰

[38] The Appellant argues that he no longer has to do so. According to him, the reasons he gave the Tribunal to show he still had implied status to work are enough to shed light on this point. The Appellant says he will not take any other steps in this regard.

[39] The Appellant indicates that he took a period of leave from May 8 to 31, 2019, after asking the employer for time off.⁴¹

[40] The Appellant explains that not much goes on at the employer during the period from May to August, since there are not many contracts. He says that he usually gets benefits between May and September.

[41] The Appellant says that the employer told him he would be able to return to work as soon as contracts came in. He points out that this is when he made his renewal claim for benefits.⁴²

[42] The evidence on file indicates that the employer sent several emails to the Appellant in May 2019 and June 2019 to find out whether he was coming back to work.⁴³

³⁸ See GD3-38.

³⁹ See GD4-7.

⁴⁰ See GD3-42.

⁴¹ Email from the Appellant to the employer dated May 7, 2019, indicating that he intended to take a vacation from May 8 to 31, 2019. In an email to the Appellant dated May 8, 2019, the employer thanked him for the notice—see GD3-47.

⁴² Renewal claim for benefits made on June 6, 2019.

⁴³ See GD3-46, GD3-49, and GD3-50.

[43] In an email to the Appellant on May 31, 2019, the employer asked him whether he was coming back to work on [Monday, June 3, 2019].⁴⁴

[44] On May 31, 2019, in an email in response to the employer's message, the Appellant told the employer that he first had to resolve his situation with Citizenship and Immigration Canada concerning the renewal of his work permit.⁴⁵

[45] In an email on June 3, 2019, the employer asked the Appellant whether he would come in to work that day for a class.⁴⁶

[46] On June 18, 2019, the employer sent the Appellant another email, telling him that they needed him and asking him to return to work.⁴⁷

[47] The Appellant did not reply to the employer's emails dated June 3 and 18, 2019.

[48] In this case, I find that the Appellant's efforts to renew his work permit before it even expired show that he wanted to work. The Appellant did say that he was able to work at various points during the period from December 20, 2018, to August 3, 2019. I note that the Commission does not dispute that the Appellant worked during that period.

[49] In my view, the fact that the Appellant's work permit was not renewed, on December 20, 2018, did not affect his desire to return to the labour market as soon as a suitable job was offered during the period from December 20, 2018, to May 7, 2019, inclusive.

[50] I find that, during that period, the Appellant wanted to return to work and remain in the labour market. In my view, the fact that he paid Citizenship and Immigration Canada \$100 on

⁴⁴ Email from the employer to the Appellant dated May 31, 2019 (11:12 a.m.), asking him the following: "Please confirm if you are returning to work Monday?"—see GD3-50.

⁴⁵ Email from the Appellant to the employer dated May 31, 2019 (12:20 p.m.)—see GD3-46.

⁴⁶ Email from the employer to the Appellant dated June 3, 2019, indicating the following: "That was not clear. Will you be here today at 10:45 for your class?"—see GD3-46.

⁴⁷ Email from the employer X to the Appellant dated June 18, 2019, telling him the following: "We need you to return to X. We are very busy at this time"—see GD3-49.

November 1, 2018, proves that the Appellant took steps to resolve his work permit situation before his permit expired.⁴⁸

[51] In addition, the Appellant worked for the employer at various points during the period from December 20, 2018, to May 7, 2019.

[52] The Appellant could reasonably believe that he still had implied status to work even though he had not completed all the administrative formalities to renew his work permit given that he had not paid the full amount required to be issued a new permit.

[53] However, I find that the Appellant did not show his desire to return to the labour market as soon as a suitable job was offered during the period from May 8, 2019, to August 3, 2019.

[54] During that period, the Appellant first took time off from May 8 to 31, 2019.

[55] Then, he did not tell the employer that he was ready to return to work in June 2019, despite being asked to do so.

[56] I find that, on May 31, 2019, when the employer asked him whether he was coming back to work after his time off and he replied that he first had to resolve his situation concerning the renewal of his work permit,⁴⁹ the Appellant did not show his desire to return to the labour market.

[57] On this point, I am of the view that the Appellant's reply to the employer contradicts his explanation that he was available for work because he still had implied status to work. On the one hand, the Appellant argues that, even though his work permit had not been renewed, he was able to work. On the other hand, he explained to his employer that he first had to sort out his work permit, but he did not indicate that he was ready to return to work. I find that, in his message of May 31, 2019, the Appellant gave such an explanation to tell the employer that, at that time, he did not want to return to work right after his leave ended. However, I find that his explanations about his efforts to renew his work permit show a desire to work for the period

⁴⁸ See GD3-33.

⁴⁹ Email from the Appellant to the employer dated May 31, 2019 (12:20 p.m.)—see GD3-46.

from December 20, 2018, to May 7, 2019. I put the most weight on the Appellant's explanations in this regard. A compelling piece of evidence does support them, namely the receipt showing that the Appellant paid a sum of money to renew his permit before it expired.⁵⁰

[58] I find that the Appellant's failure to respond to the employer's June 3 and 18, 2019, requests to return to work does not show a desire to return to the labour market either.

[59] The Appellant's testimony indicates that he did not return to work with the employer until September 10, 2019.

[60] In summary, I find that the Appellant showed his desire to return to the labour market as soon as a suitable job was offered during the period from December 20, 2018, to May 7, 2019, despite not meeting all the requirements to renew his work permit. However, I find that he did not show such a desire from May 8, 2019, to August 3, 2019.

Issue 2: Did the Appellant express that desire through efforts to find a suitable job?

[61] I find that the Appellant expressed his desire to return to the labour market through significant efforts to find a suitable job during the period from December 20, 2018, to May 7, 2019, inclusive. However, I find that he did not express such a desire during the period from May 8, 2019, to August 3, 2019.

[62] The Appellant explains that he worked for the employer during the period from December 20, 2018, to August 3, 2019, except for the period from May 8 to 31, 2019.

[63] The Appellant says that he attended a training session with the Commission when he filed his renewal claim for benefits.⁵¹ About two weeks after this meeting, the Appellant gave the Commission a list of employers he had contacted.

⁵⁰ Official receipt from Citizenship and Immigration Canada dated November 1, 2018, showing that the Appellant paid it \$100—see GD3-33.

⁵¹ Renewal claim for benefits made on June 6, 2019.

[64] Concerning his efforts to find a job, the Appellant says that he applied to several employers between May 2019 and September 2019. He provided a list of a dozen potential employers he applied to during that period.⁵²

[65] In its representations, the Commission argued that, given his failure to show that he was capable of work, the Appellant was unable to show that he was looking for work. According to the Commission, before they can even look for work and assess these efforts, claimants must first prove their ability, or their right, to work.⁵³

[66] In this case, I find that, even though he had not renewed his work permit, on December 20, 2018, given that he had not met all the relevant requirements, the Appellant made efforts showing his desire to work in a suitable job until May 7, 2019.

[67] I accept that the Appellant worked for the employer at various points between December 20, 2018, and May 7, 2019, despite the fact that he had not completed his application to renew his work permit. There is nothing in the evidence on file to indicate that the Appellant was waiting to be called back to work during the period from December 20, 2018, to May 7, 2019.

[68] I also accept that some of the job search efforts the Appellant says he made took place in May 2019, according to what he indicated in this regard.⁵⁴

[69] In addition, I note that the Appellant's testimony indicates that he was able to return to work with the employer on September 10, 2019, several days before he even received his work permit. His work permit came into effect on September 17, 2019.⁵⁵

[70] I do not accept the Commission's argument that, given his failure to show that he was capable of work, the Appellant was unable to show that he was looking for work.⁵⁶

⁵² See GD8-1.

⁵³ See GD4-8.

⁵⁴ See GD8-1.

⁵⁵ See GD3-31 and GD3-32.

⁵⁶ See GD4-8.

[71] I note that the issue of whether a claimant has a work permit has constantly been considered in connection with the factor of personal conditions that might have unduly limited the chances of returning to the labour market, not as an issue of ability to work.

[72] Decisions from the Tribunal's Appeal Division state that not having a valid work permit should be considered under the factor of not setting personal conditions that could unduly limit the chances of returning to the labour market.⁵⁷

[73] In another decision, the Appeal Division explained that the Commission argued that not having a work permit is a personal condition that prevents a claimant from being available for work.⁵⁸

[74] Although I am not bound by the Tribunal's decisions, I consider its findings persuasive in showing that the issue of whether a person has a work permit should be considered in relation to personal conditions that might have unduly limited the chances of returning to the labour market. As a result, I adopt the same approach in this case.

[75] However, I find that the Appellant did not express his desire to find a suitable job during the period from May 8, 2019, to August 3, 2019, through efforts in that regard.

[76] First, the Appellant took time off from May 28 to 31, 2019. He chose not to work or not to try to find a job during that period.

[77] Second, I find that the Appellant did not want to return to work after his time off, despite his employer's offers in this regard on May 31, June 3, and June 18, 2019.⁵⁹

[78] On May 31, 2019, after his employer asked him that same day whether he was coming back to work, the Appellant raised the issue of the renewal of his work permit and did not agree to return to work⁶⁰ when he had the opportunity to do so.

⁵⁷ See the Appeal Division decisions in *Canada Employment Insurance Commission v AR*, 2016 SSTADEI 179; and *Canada Employment Insurance Commission v LB*, 2015 SSTAD 1332.

⁵⁸ See the Appeal Division decision in *AW v Canada Employment Insurance Commission*, 2016 SSTADEI 479.

⁵⁹ See GD3-46, GD3-49, and GD3-50.

⁶⁰ Email from the Appellant to the employer dated May 31, 2019 (12:20 p.m.)—see GD3-46.

[79] In addition, the Appellant did not reply to the employer's emails dated June 3 and 18, 2019, asking him whether he was coming back to work or telling him that the language school needed him because it was very busy.⁶¹

[80] Under the circumstances, I do not accept the Appellant's argument that there are few teaching contracts at the employer during the period from May to September.

[81] I find that the Appellant had the opportunity to return to work with the employer from June 2019, but he chose not to respond to the offers made to him in this regard.

[82] Even though the Appellant says that he contacted potential employers from May to September 2019, I find that these were not efforts to find a suitable job. I am of the view that the Appellant had the opportunity to return to work with his employer, but he did not respond to his employer's request him [*sic*] in June 2019. I find that, as a result, the Appellant continued to wait to return to work with his usual employer.

[83] The Court tells us that, to be able to get Employment Insurance benefits, claimants are responsible for actively seeking suitable employment, even if it may seem reasonable for them not to do so.⁶²

[84] I find that, from December 20, 2018, to May 7, 2019, inclusive, the Appellant met his obligation to make efforts to find a suitable job. However, I find that the Appellant failed to meet this obligation from May 8, 2019, to August 3, 2019.

Issue 3: Did the Appellant set personal conditions that might have unduly limited his chances of returning to the labour market?

[85] I find that the Appellant did not set "personal conditions" that unduly limited his chances of returning to the labour market during the period from December 20, 2018, to May 7, 2019.

⁶¹ Email from the employer to the Appellant dated June 3, 2019, indicating the following: "That was not clear. Will you be here today at 10:45 for your class?"—see GD3-46; and email from the employer to the Appellant dated June 18, 2019, indicating the following: "We need you to return to X. We are very busy at this time"—see GD3-49.

⁶² The Court established this principle in the following decisions: *De Lamirande*, 2004 FCA 311; and *Cornelissen-O'Neil*, A-652-93.

However, I find that he did set such conditions from May 8, 2019, to August 3, 2019, when his benefit period ended.

[86] In its representations, the Commission argued that the Appellant had failed to show that there were no personal conditions that could unduly limit his chances of returning to the labour market. According to the Commission, claimants have to show not only that they want to return to the labour market as soon as possible, but also that they are able to work. The Commission submits that, if you do not have the right to work in Canada because you lost your work permit, you cannot say that you are available, since you cannot say that you are able to work to begin with. It noted that the Appellant had not shown that he was capable of work from a legal perspective. According to the Commission, the Appellant has instead shown that there was a major barrier to his availability, namely the fact that he could not legally work in Canada.⁶³

[87] The Commission explained that it had concluded, on a balance of probabilities, that the Appellant had lost his implied status and that he needed to prove that he still had it between November 1, 2018, when he applied to renew his work permit, and September 17, 2019, when the new work permit came into effect. According to the Commission, the Appellant has failed to do so.⁶⁴

[88] I find that the Appellant did not set personal conditions related to the fact that his work permit had not been renewed on December 20, 2018.

[89] On this point, I am of the view that, even though he had not completed all the steps to renew his work permit, the Appellant has still shown that he was able to work despite this situation. I note that his testimony shows that he returned to work with the employer on September 10, 2019, several days before his work permit came into effect.

[90] I accept the Appellant's explanation that, even though he did not have an official document showing that he still had implied status to work without having his work permit, this situation did not prevent him from working.

⁶³ See GD4-6 and GD4-8.

⁶⁴ See GD4-7.

[91] I find the Appellant's testimony to be credible. He has given detailed explanations about his efforts to renew his work permit before it expired. The Appellant has provided several relevant pieces of evidence in this regard, including the evidence that he took steps to renew his permit before it expired by making a payment for this purpose, and the evidence that he could have retained implied status until his situation was resolved.⁶⁵

[92] I am of the view that this is not the case of a claimant whose work permit had expired and who did not apply for a renewal or extension before the permit expired. I note that the Appellant took steps to renew his work permit before it expired. I find that the Appellant has shown that he did not surrender his work permit or decide that he did not want to renew it. The Appellant could reasonably believe that there were no barriers that could prevent him from working.

[93] I find that the Appellant has therefore shown that he was available for work without necessarily unduly limiting his chances of returning to the labour market.

[94] I do not accept the Commission's argument that the Appellant has failed to show there were no personal conditions that could unduly limit his chances of returning to the labour market because, according to the Commission, he lost his implied status that allowed him to hold a job.

[95] Neither the Federal Court of Appeal nor the Federal Court has made decisions dealing with the issue of the availability of a claimant who has or had a work permit.

[96] I note that, in an Umpire decision, the Umpire allowed the appeal of a claimant who had been disentitled from receiving benefits because his work permit was expired.⁶⁶ In that decision, the Umpire noted the contents of a previous decision from another Umpire⁶⁷ to explain that section 18 of the Act applies to circumstance of unavailability created by a claimant by their absence or by engaging in an activity of their own choosing preventing them from satisfying the

⁶⁵ Official receipt from Citizenship and Immigration Canada dated November 1, 2018, showing that the Appellant paid \$100—see GD3-33; and handwritten note indicating that, if you apply for an extension of the work [permit] before the permit expires, you retain your status until the day the officer makes a decision—see GD3-25.

⁶⁶ See CUB 73880.

⁶⁷ See CUB 44956.

onus of proving availability. I also note that, in that decision,⁶⁸ the Commission recommended allowing the appeal.

[97] However, I find that the Appellant set personal conditions from May 8, 2019, to August 3, 2019, because, to begin with, he took time off from May 8 to 31, 2019. He chose not to work during that period.

[98] These personal conditions are also related to his failure to explain why he did not respond when his employer asked him to come back to work beginning in June 2019.

[99] I find that his explanation in this regard is not satisfactory, namely that there were not many contracts at the employer during the period from May to September. I am of the view that the Appellant chose to delay his return to work. His testimony shows that he returned to work on September 10, 2019.

[100] In summary, I find that, from May 8, 2019, to August 3, 2019, the Appellant set his own conditions and determined the conditions under which he would have accepted employment or agreed to return to work with the employer. I find that, during that period, the Appellant set personal conditions that unduly limited his chances of returning to the labour market.

Conclusion

[101] I find that the Appellant has shown that he was available for work from December 20, 2018, to May 7, 2019, inclusive. This means that he is entitled to receive benefits for that period.

[102] The Appellant has not shown that he was available for work from May 8, 2019, to August 3, 2019, inclusive. This means that he is disentitled from receiving benefits for that period.

⁶⁸ See CUB 73880.

[103] The appeal is allowed in part.

Normand Morin
Member, General Division – Employment Insurance Section

HEARD ON:	September 3, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	B. K., Appellant